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AP/1634C  
JEW

CASE TX/4-30776A



FILING BY "EXPRESS MAIL" UNDER 37 CFR 1.10

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June 18, 2004

Date of Deposit

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF

Art Unit: 1644

DIGAN ET AL.

Examiner: Ewoldt, G.

APPLICATION NO: 09/480,236

FILED: JANUARY 10, 2000

FOR: ANTI-CD3 IMMUNOTOXINS AND THERAPEUTIC USES  
THEREFOR

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

PETITION UNDER 37 CFR 1.181 TO REVERSE THE  
HOLDING OF A NON-COMPLIANT BRIEF

Sir:

A "Notice of Non-Compliance with 37 CFR 1.192(c)" was mailed on May 18, 2004 for the above-identified application. A copy of said Notice is included herewith.

Box 9 of the Notice was checked (other) and no particular section of 37 CFR 1.192(c) was identified. The reason for the holding of non-compliance was given in the Notice as:

"Appellant has improperly introduced a new reference (Hexham et al.) that is not of record into the Brief."

Appellants know of no statute, rule or case law that prohibits introduction of a reference for the first time in an Appellant's Brief. MPEP 1206 under the heading "APPEAL BRIEF CONTENT" recites:

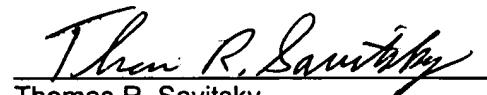
"If in his or her brief, appellant relies on some reference, he or she is expected to provide the Board with three copies of it."

Three copies of the Hexham et al. reference were provided as an appendix to Appellant's Brief. Therefore, Appellant has fully complied with Patent Office Practice. The Examiner will have ample opportunity to address the Hexham et al. reference in the Examiner's Answer.

For the above-stated reasons, it is submitted that Appellants' Brief is in full compliance with 37 CFR 1.192(c). It is respectfully requested that this petition be granted and that Examiner's holding of non-compliance be reversed.

No fee is believed to be due; however, in the event a fee is deemed to be required, please charge the required fee to Deposit Account No. 19-0134 in the name of Novartis.

Respectfully submitted,

  
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TRS/ld

Date: June 18, 2004